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PALMER *v.* SHOWALTER.

Nov. 20, 1919.

[101 S. E. 136.]

1. Fraud (§ 50*)—Presumption of Fair Dealing to Be Overcome by Clear Evidence.—In action by broker to recover damages on account of deceit of landowner in transferring land to a purchaser furnished by the broker by a pretended sale to a third person, the landowner is entitled to a presumption of fair dealing which can be overturned only by clear and satisfactory evidence.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 502.]

2. New Trial (§ 72*)—Verdict against Evidence.—It is the duty of the trial judge to set aside a verdict which is plainly against the evidence or without evidence to sustain it.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 453.]

3. Appeal and Error (§ 1015 (3)*)—Review of Verdict Set Aside by Trial Court.—The court on appeal will sustain a verdict, although it has been set aside by the trial judge, unless it can perceive that there has been a plain deviation from right and justice and that the jury has found a verdict against the law or against evidence or without evidence; but due weight must be given the action of the trial court in setting aside the verdict.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 471; 1 Va.-W. Va. Enc. Dig. 617.]

4. Fraud (§ 58 (1)*)—Finding That Sale to Third Person Was Pretense Sustained by Evidence.—In action by broker for damages by reason of deceit of landowner in transferring the land to a third person, who in turn transferred it to a buyer furnished by broker, to avoid payment of commission, evidence held to sustain a verdict in favor of plaintiff.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 640; 6 Va.-W. Va. Enc. Dig. 508.]

5. Contribution (§ 5*)—Between Joint Tort-Feasors.—The law imposes no duty of contribution between joint tort-feasors to the payment of damages occasioned by their joint tort.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 483. See § 5779, Code 1919, allowing contribution among wrongdoers to be enforced where wrong is a mere act of negligence and involves no moral turpitude.]

6. Trial (§ 328*)—Verdict against One of Two Joint Tort-Feasors Sustained.—In action by broker against landowner and third person to recover damages in that owner and such third person had entered into a pretended sale of the land to avoid payment of a com-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

mission to the broker, the third person having transferred the land to a buyer furnished the owner by the broker, the fact that the jury brought in no verdict against the third person did not indicate that they acquitted him of all complicity in the pretended sale, so that the verdict against the owner should not stand; the jury not being required to return verdict against both.

Error to Circuit Court, Augusta County.

Action by Edward Palmer against Samuel J. Showalter and another. There was a judgment for defendants, and plaintiff brings error. Reversed and rendered.

Rudolph Bumgardner and *Curry & Curry*, all of Staunton, for plaintiff in error.

Kerr & Crosby and *Jos. A. Glasgow*, all of Staunton, for defendant in error.

GRIM v. GRIM.

Nov. 20, 1919.

[101 S. E. 140.]

1. Divorce (§ 133 (1)*)—Evidence of Willful Desertion and Abandonment.—Evidence held to show husband's willful desertion and abandonment, although it might have been conducive to a fuller development of the facts if the court had required, under Acts 1914, c. 90, that the more important parts of the testimony be given *ore tenus* in open court.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 738.]

2. Divorce (§ 133 (1)*)—Full Proof of Willful Desertion Necessary.—Proof of willful desertion without justification or excuse should be full and satisfactory.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 745; 17 Va.-W. Va. Enc. Dig. 333.]

Appeal from Circuit Court, Page County.

Action by Maude M. Grim against William Grim for divorce. Judgment for defendant, and plaintiff appeals. Reversed, rendered, and remanded.

R. S. Parks, of Luray, for appellant.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.